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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,424	12/22/2004	Andrea Caserta	HERRA-70160	7502

7590 03/12/2007
Fulwider Patton Lee & Utecht
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Los Angeles, CA 90045

EXAMINER

PAIK, SANG YEOP

ART UNIT	PAPER NUMBER
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3742

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/519,424

Applicant(s)

CASERTA ET AL.

Examiner

Sang Y. Paik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 15, 16, 19, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demarest et al (US 6,361,752) in view of Vieira (US 6,563,091).

Demarest shows the device claimed including a casing with a slot, a container containing active substances with a wick, and a fan, electric plugs and a heater connected to provide heating and an airflow to the upper portion of the wick. But, Demarest does not show a single button with a second additional heating resistor to change the operating mode to a boosting operation mode to increase the evaporation and diffusion of the active substances. Also see Figures 9 and 10.

Vieira shows an evaporation device with a container containing active substances, a wick a pair of heating resistors, and a single button to turn on and off the heating resistors and also to active and deactivate the operation modes from normal to a boosting mode to increase the evaporation and diffusion rate of the active substances. Vierra further shows such increase is achieved via a second heating resistor or in combination of all the heating resistors.

In view of Vierra, it would have been obvious to one of ordinary skill in the art to adapt Demarest with a second heating resistor to provide for a rapid and substantially instant increase in the evaporation and diffusion of the active substance to meet the user's need for such intensity

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with the fan that is switched on with the activation of the heaters to provide and increase the air stream that would enhance the diffusion of the active substance.

3. Claims 17, 18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demarest in view of Vieira as applied to claims 15, 16, 19, 23 and 24 above, and further in view of Pankhurst et al (US 2005/0001337).

Demarest in view of Vieira shows the device claimed except the means for regulating the speed of the fan.

Pankhurst shows an evaporation device for an active substance with a fan that is further controlled by a controller which controls the speed of the fan as well as the timing of the fan for boosting of the active substance.

In view of Pankhurst, it would have been obvious to one of ordinary skill in the art to adapt Demarest, as modified by Vieira, with the means for regulating the speed of the fan to enhance increasing or decreasing the evaporation and diffusion rate of the active substance.

4. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demarest in view of Vieira as applied to claims 15, 16, 19, 23 and 24 above, and further in view of Pedrotti et al (US 6,931,202)

Demarest in view of Vieira shows the device claimed except the casing with a case and a base provided with slots for entry of air, and an evaporation intensity regulator.

Pedrotti shows that it is well known in the art to provide an evaporator with a case and a base provided with slots, and Pedrotti further shows an evaporation intensity regulator to further control the outflow and direction of the air when desired.

In view of Pedrotti, it would have been obvious to one of ordinary skill in the art to adapt Demarest, as modified by Vieira, with the casing with slots for entry of air to enhance the air circulation in and through the device with the evaporation intensity regulator to further control the rate and direction of the air flow.

5. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Demarest in view of Vieira as applied to claims 15, 16, 19, 23 and 24 above and further in view of Yip et al (US 6,859,615) or Spector (US 4,629,604).

Demarest in view of Vieira shows the device claimed except an luminous indicator to show the activation of the second heating resistor.

Yip and Spector show an evaporation device having multiple heating elements, and they further show that it is well known in the art to provide an light or luminous indicator to each of the respective heating elements to show the operation status of each heating elements.

In view of Yip or Spector, it would have been obvious to one of ordinary skill in the art to adapt Demarest, as modified Vieira, with the luminous indicator to each of the heating resistors to show the active or inactive status of each heating resistor to conveniently show the operating conditions of the evaporation device.

Response to Arguments

6. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y. Paik whose telephone number is 571-272-4783. The examiner can normally be reached on M-F (9:00-4:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sang Y Paik
Primary Examiner
Art Unit 3742

syp